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PROMOTION AND PROTECTION OF HUMAN RIGHTS
HUMAN RIGHTS DEFENDERS

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

GE.00-10476 (E)

Human rights defenders face financial squeeze

1. On 10 December 1998, the United Nations General Assembly, by its resolution 53/144, adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (popularly known as "Declaration on Human Rights Defenders") to mark the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights. Yet many Governments are less than pleased with the adoption of the Declaration and have sought to undermine the minimalist aspirations of the Declaration.

2. A few Governments have adopted a conscious policy to harass human rights defenders since the adoption of the Declaration. India, which prides itself on being the largest democratic country in the world, seems to have joined the select club of these few countries. On human rights issues, the Government of India feels more comfortable being in the company of authoritarian countries, including its neighbour, Pakistan. In May 1999, the Government of Pakistan unilaterally de-recognized about 2,000 non-governmental organizations (NGOs) in Pakistan. The largest democratic country of the world, India, could not be seen to lag behind.

3. From mid-1999, NGOs organizing international conferences in India have been required to seek prior permission from the Ministry of Home Affairs and other relevant ministries before hosting or inviting international events or participants. Known as the clearance requirement, NGOs are required to submit personal details of international participants. The clearance requirement is not pursuant to any law. The new requirements are simply a new executive caprice on the part of the Government of India.

4. Since 10 December 1998, the Government of India has not allowed the World Commission on Dams to hold its meetings in India, banned an international conference on Burma organized by the International Confederation of Free Trade Unions, and denied visas to participants in the John Hopkins Philanthropist Conference.

5. Since September 1999, the Government of India has intensified its efforts to restrict the activities of NGOs by breathing new life into an anachronistic, Emergency-era statute. On 25 September 1999, two officials of the ruling party, the Bharatiya Janata Party (BJP), in separate statements called for the investigation and punishment of 13 NGOs for their sponsorship of a newspaper advertisement criticizing the Hindu fundamentalist party's positions on women's issues. The party officials assailed these organizations as "anti-national and anti-Indian" - not only on account of their sponsorship of the advertisement, but also based on their criticism of the Pokhran nuclear tests of May 1998.

6. Within days of these statements, the Indian Home Ministry dutifully served notice upon several of the 13 NGOs, presumptively classifying the groups as "organization[s] of a political nature, not being a political party" under section 5 (1) of the draconian Foreign Contribution Regulation Act (FCRA). If unable to rebut this classification, these NGOs would be required to obtain prior permission from the Home Ministry before receiving any foreign contributions.

When another NGO, the Voluntary Action Network India (VANI), publicly defended the groups, it too was promptly informed that the Home Ministry intended to cancel its registration to receive contributions from abroad without prior permission. According to information available, in addition to these 13 NGOs a large number of NGOs across the country have been served notice by the FCRA Department of the Indian Home Ministry.

7. FCRA requires all Indian organizations and individuals that seek to receive foreign contributions to receive clearance from the Ministry of Home Affairs, in the form of either registration or prior permission. Curiously, the Home Ministry has been highly selective in its efforts to regulate foreign funds in Indian political and social life. The Sangh Parivar (the family of Hindu fundamentalist organizations) and government officials have expressed outrage over the role allegedly played by foreign funding in support of Christian and Muslim organizations. However, Sangh Parivar organizations are among those receiving the most foreign contributions in India. It has been reported, for example, that the Vishwa Hindu Parishad (VHP) (World Hindu Council) has raised and remitted to India at least $1.25 billion (approximately Rs 53 billion) from the United States since 1977 with much of this money apparently being used to fund schemes that seek to intimidate tribal peoples from converting to Christianity or Islam.

8. Even the BJP itself - which, as a political party, is subject to more stringent restrictions under FCRA - has received substantial foreign contributions. The party's United States arm, the "Overseas Friends of the BJP", routinely hosts expensive fund-raisers and has sent large delegations to India to campaign on behalf of BJP - trips that are presumably financed with foreign funds. The Home Minister, Mr. L.K. Advani, has, however, turned a blind eye to this conduct by members of his ideological fraternity.

9. These examples reveal a pattern of arbitrary enforcement of FCRA that violates fundamental freedoms guaranteed by the Constitution of India and international human rights law. On its face and as applied, FCRA violates article 19 of the Constitution of India and several international human rights instruments that guarantee freedom of expression and freedom of association including articles 19 (3) and 22 (1) of the International Covenant on Civil and Political Rights, ratified by India in 1979. The Government's arbitrary application of FCRA also violates guarantees of equality and due process under articles 14 and 21 of the Constitution of India. Moreover, the decision to target NGOs that criticize the Government's record on women's rights raises serious questions about the Government's commitment to implementation and enforcement of the Convention on the Elimination of All Forms of Discrimination of Women, which India ratified in 1993.

10. While the Government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. Narrowly tailored financial reporting requirements for NGOs serve legitimate governmental interests and should remain in place. However, these laws should be administered by the Ministry of Finance, rather than the highly politicized Home Ministry. And to the extent that the direct channels of political participation

are to be reserved for Indian citizens, the proper targets of regulation are political parties and the candidates they field for office, not voluntary organizations and advocacy groups.

11. Democracy and human rights depend upon the vitality of civil society which, in turn, depends upon the ability of NGOs to operate free of arbitrary legal obstacles. The Government's heavy-handed use of FCRA to restrict the legitimate activities of politically disfavoured NGOs represents yet another troubling retreat from India's democratic tradition. The subtle undemocratic measures severely restricting the activities of the actors of the civil society are becoming the hallmark of Indian democracy.